



REPUBLIC OF KENYA



**Otieno v Republic (Miscellaneous Criminal Application  
85 of 2023) [2024] KEHC 3897 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3897 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
MISCELLANEOUS CRIMINAL APPLICATION 85 OF 2023**

**DO OGEMBO, J**

**APRIL 18, 2024**

**BETWEEN**

**BYRON OMONDI OTIENO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an Application for Sentence Review from Sentence in Ukwala SRMs Court Criminal Case No. 350 of 2016 by Hon. G. Adhiambo, Senior Resident Magistrate, dated 13/12/2016)*

**RULING**

1. The applicant, Byron Omondi Otieno, has moved this court by way of a Chamber Summons Application datd 24/1/2023. The application is brought under Article 22 (1), 23 (1), 25 (c), 27 (10), 4, 50 (2)(p) (q), 159 (2) and 165 (3) of *the Constitution* also Section 333 (2) of the *Criminal Procedure Code*. The application simply prays that he period of 6 months that the Applicant spent in custody be computed in his sentence. In the Affidavit in support of the Application, the Applicant has deponed that he was charged, convicted and sentenced to serve life imprisonment in Ukwala SRM's Court in Criminal Case No. 350 of 2016. That he thereafter appealed against the conviction and sentence to the High Court in Siaya HCCR Appeal No. 183 of 2016.
2. That in appeal, his sentence was substituted and reduced to 20 years imprisonment. He now seeks that the period he spend in custody be accounted for in the sentence pursuant to Section 333 (2) of the *Criminal Procedure Code*.
3. The application of the Applicant is opposed by the prosecution side. Learned Counsel Ms. Mumu, appearing for the prosecution, submitted that the High Court already decided on the issue of the period spent in custody under Section 333 (2) of the *Criminal Procedure Code*.



4. I have considered the application of the Applicant and also the response from the prosecution side. I have also carefully considered the record of proceedings regarding the case of the Applicant. The record show that the court noted as follows:

“However, considering the circumstances of the offence and the mitigation put forward by the Appellant at the trial, I find that the life sentence imposed on the Appellant was too harsh. I hereby set it aside and substitute it with sentence of 20 years imprisonment to be calculated from the date of arraignment in court.

5. With the above finding, it is clear that the High Court already revised the sentence of the Applicant and accounted for the period by Section 333 (2) of the *Criminal Procedure Code*. There is therefore nothing to revise on the sentence of the Applicant.

6. I accordingly find this application of the Applicant dated 24/1/2023 totally lacking in any merit. I dismiss the same.

Orders accordingly.

**DATED, SIGNED AND DELIVERED THIS 18<sup>TH</sup> DAY OF APRIL, 2024.**

**D.O. OGEMBO**

**JUDGE**

**18/4/2024**

**Court**

Read out in court in presence of Applicant (Naivasha) and Mr. Baraza for State.

**D.O. OGEMBO**

**JUDGE**

**18/4/2024**

